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ejectment to file their grounds of defense under Code, § 3249, is harmless where plaintiff was not prejudiced by the ruling.

[Ed. Note.—For other cases, see Appeal and Error, Dec. Dig. § 1039.* 1 Va.-W. Va. Enc. Dig. 581.]

2. Adverse Possession (§ 70*)—Color of Title—Condemnation Proceedings.—Condemnation proceedings are admissible on the part of a defendant in ejectment to show color of title as a basis of adverse possession.

[Ed. Note.—For other cases, see Adverse Possession, Dec. Dig. § 70.* 1 Va.-W. Va. Enc. Dig. 206.]

3. Adverse Possession (§ 70*)—Color of Title—Condemnation Proceedings.—Condemnation proceedings do not constitute color of title to sustain adverse possession until a final order has been entered confirming the report of commissioners, and reciting that the damages have been paid, and hence limitations do not start to run until such order.

[Ed. Note.—For other cases, see Adverse Possession, Dec. Dig. § 70.* 1 Va.-W. Va. Enc. Dig. 206.]

4. Adverse Possession (§ 70*)—"Color of Title."—"Color of title" is that which in appearance is title, but which in reality is no title at all.

[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 394-414; Dec. Dig. § 70.*

For other definitions, see Words and Phrases, vol. 2, pp. 1264-1273; vol. 8, p. 7606. 1 Va.-W. Va. Enc. Dig. 206.]

Error to Circuit Court, Clarke County.

Ejectment by J. Gover Knight and another against P. T. Grim and another. From a judgment for defendants, plaintiffs bring error. Reversed, and new trial granted.

Whiting & Smith, for plaintiffs in error.

Harrison & Lewis, for defendants in error.

BALTIMORE & O. R. CO. *v.* LEE.

Nov. 18, 1909.

[66 S. E. 51.]

1. Railroads (§ 370*)—Injury to Licensee—Negligence—Switching Cars—Absence of Signals.—A rule of a railroad company that in making up and switching trains in yards at night the leading car need

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

not carry a white light or flagman with a signal is reasonable; and a failure to exercise such precaution is not negligence.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1263; Dec. Dig. § 370.* 11 Va.-W. Va. Enc. Dig. 573.]

2. Railroads (§ 278*)—Injuries to Licensees—Absence of Signals—Knowledge.—Where an employee of another railroad which used a switch jointly with defendant company heard defendant's train backing into the switch in the night toward a car on which he was seated, he cannot complain, in an action against defendant for injuries by backing into the car, that defendant's head car did not carry signals.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 895; Dec. Dig. § 278.* 11 Va.-W. Va. Enc. Dig. 573.]

3. Railroads (§ 278*)—Injuries to Licensees—Contributory Negligence.—Where a brakeman of a railroad company, while seated in a car on the delivery track in a switchyard, knew that the track was used jointly by it and defendant company, and that defendant delivered cars on the track at that time each evening, his employment did not relieve him from exercising care for his own safety.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 895; Dec. Dig. § 278.* 11 Va.-W. Va. Enc. Dig. 591.]

4. Railroads (§ 278*)—Injuries to Licensees—Contributory Negligence.—Plaintiff, on seeing defendant's train pass on the main track, and knowing that it would immediately back into the delivery track, and couple with the coach in which he was seated, unnecessarily went onto the platform of the coach as defendant's train struck it, and he was knocked off and injured. The night was so dark that he could not see defendant's train back up to the coach, and the noises in the yard prevented him from hearing it. Held, that plaintiff was negligent in going upon the platform.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 895; Dec. Dig. § 278.* 11 Va.-W. Va. Enc. Dig. 591.]

5. Railroads (§ 278*)—Injuries to Licensees—Proximate Cause.—Defendant had no opportunity, in the exercise of ordinary care, to avoid the accident after plaintiff went upon the platform.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 895; Dec. Dig. § 278.* 11 Va.-W. Va. Enc. Dig. 593.]

Error to Circuit Court, Rockingham County.

Action by Benjamin E. Lee against the Baltimore & Ohio Railroad Company. Judgment for plaintiff, and defendant brings error. Reversed, and judgment entered for defendant.

D. O. Dechert and *C. R. Winfield*, for defendant in error.
Bumgardner & Bumgardner, for plaintiff in error.

*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.